

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

DAVID REKO HERNANDEZ,

Petitioner,

vs.

LEROY KIRKEGARD; ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

CV 14-33-H-DLC

ORDER

FILED

JUN 11 2014

Clerk, U.S. District Court
District Of Montana
Missoula

United States Magistrate Judge R. Keith Strong entered Findings and Recommendation on May 19, 2014, recommending that the petition be dismissed without prejudice for failure to exhaust state judicial remedies. Hernandez failed to timely object to the Findings and Recommendations, and so waived the right to *de novo* review of the record. 28 U.S.C. § 636(b)(1). The Court will therefore review the record for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court adopts Judge Strong's findings and recommendation in full.

Defendant filed this habeas petition prior to filing his petition for postconviction relief with the Montana Supreme Court. Defendant must exhaust

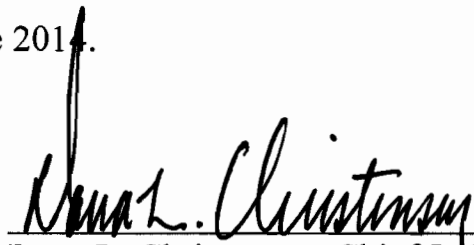
his state judicial remedies before he brings his habeas action in federal court.

Rose v. Lundy, 455 U.S. 509, 520 (1981); *Slack v. McDaniel*, 529 U.S. 473 (2000).

A certificate of appealability is not appropriate in this case. *Gonzalez v. Thaler*, 132 S.Ct. 641, 648 (2012).

IT IS ORDERED that Judge Strong's Findings and Recommendation (Doc. 3) are ADOPTED IN FULL. Hernandez's petition is DISMISSED WITHOUT PREJUDICE. A certificate of appealability is DENIED.

DATED this 11th day of June 2014.



Dana L. Christensen, Chief Judge
United States District Court